document which is not the deed of the company. I could have understood a claim on the part of the appellants if it were incumbent on the company to lock up their seal and guard it as a dangerous beast and if it were culpable carelessness on the part of the directors to commit the care of the seal to their secretary or any other official. That is a view which once commended itself to a jury, but it has been disposed of for good and all by the case of *Bank of Ireland* v. *Trustees of Evans' Charities* in this House". (See 5 H.L.C. 389).

Another ground put forward by the company was that the certificates were forgeries. Lord Loreburn made the following observation when the issue of forgery was raised (page 443) :—

"I cannot see upon what principle your Lordships can hold that the defendants are liable in this action. The forged certificate is a pure nullity. It is quite true that persons dealing with limited liability companies are not bound to inquire into their indoor management and will not be affected by irregularities of which they had no notice. But this doctrine, which is well established, applies only to irregularities that otherwise might affect a genuine transaction. It cannot apply to a forgery".

Lord Macnaghten had this to say (page 444) :—

"The thing put forward as the foundation of their claim is a piece of paper which purports to be a certificate of shares in the company. This paper is false and fraudulent from beginning to end. The representation of the company's seal which appears upon it, though made by the impression of the real seal of the company, is counterfeit, and no better than a forgery. The signatures of the two directors which purport to authenticate the sealing are forgeries pure and simple. Every statement in the document is a lie. The only thing real about it is the signature of the secretary of the company, who was the sole author and perpetrator of the fraud. No one would suggest that this fraudulent certificate could of itself give rise to any right or bind or affect the company in any way. It is not the company's deed, and there is nothing to prevent the company from saying so".

This principle has been applied to bills of exchange forged by a branch manager. See *Kreditbank Cassel* v. *Schenkers Ltd.*,[7] and to share certificates forged by the director and secretary of a company: *South London Greyhound Race-courses Ltd.* v. *Wake.*[8]

Although it is correct to hold that the present plaintiffs have a right to assume that all matters of internal management in the defendants' department had been duly complied with and that they would not be affected by irregularities of which they had no notice, that rule applies only to irregularities that might otherwise affect a genuine transaction. It cannot apply to a forgery. In my opinion this point is fatal to the plaintiffs' case and therefore they can make no claim against the defendants except upon one of two grounds, either that the defendants are estopped from setting up the forgeries (see *Greenwood* v. *Martin's Bank Ltd.*[9]) or that the office messenger had such ostensible authority as to render his employers, the defendants, liable for his act in presenting the orders and taking delivery of the goods.

In my judgment the defendants are not estopped from setting up the forgeries. There were no previous conduct or dealings of the defendants to establish agency by estoppel. The defendants had never conducted themselves in any manner or done anything to represent or lead the plaintiffs to the belief that those transactions were their deeds. Without such representation there can be no estoppel. There was no evidence in this case upon which an estoppel could be founded. The plaintiffs are then driven to rely, if they can, upon the ordinary rule applicable in the case of principal and agent. If they can show that the preparation and authentication of those orders were within the ostensible authority of the person occupying the position which this office messenger occupied, there might have been a claim founded upon this ground. There was no such evidence. Indeed it was proved that it was not part of the office messenger's duties to issue local orders. Counsel for the plaintiffs then sought to persuade me to consider the case from another angle. He says that the issue of forgery is totally irrelevant. The only point which I have to consider, he says, is that those orders which in all respects were in proper form, i.e. duly signed and stamped, were presented by the agent of the defendants wearing their authorised uniform. In my opinion the fact that those orders were forgeries cannot give them the efficacy which they do not intrinsically possess. The office messenger, who is a mere servant, may be the proper person to present (personally) those orders which the defendants might in due course issue, but he can have no authority to guarantee the genuineness or validity of the documents which are not the deeds of the defendants. If those orders were forgeries, then they were mere waste paper.

The plaintiffs' case is dismissed with costs.

Claim dismissed.

Solicitors: *R. Rajasingam & Co.; Shook Lin & Bok.*

KOAY HEAN KIM v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) February 7, 1969]
[Penang — Criminal Appeal No. 5 of 1969]

Criminal Law and Procedure — Sentence — Appeal against — Discretion of lower court — Whether an appeal judge should interfere.

Penal Code, s. 385 — Putting person in fear of injury in order to commit extortion — Sentence.

Unless a sentence imposed by a lower court is manifestly excessive an appeal judge should not interfere with the discretion of a magistrate otherwise there would be chaos in the lower courts so far as exercising the discretion in the matter of punishment is concerned.

CRIMINAL APPEAL.

Baldev Singh Bhar for the appellant.

K.C. Vohrah (Deputy Public Prosecutor) for Public Prosecutor.

Ong Hock Sim J. (delivering oral judgment): The appellant in this case was convicted on his own plea to the following charge and sentenced to 9 months imprisonment:—

"That you on the 1st day of November, 1968 at 5.00 p.m. at No. 443, Beach Street, Penang, in the district of George Town, in the State of Penang, attempted to put one Seah Choon Hock (m) in fear of injury, to wit, hurt to his person, in order to the committing of extortion, and that you have thereby committed an offence punishable under section 385 of the Penal Code."

The appellant appeals to the court to set aside the sentence and impose a fine as he would lose his job if he were sentenced to imprisonment.

I regret that if I were to interfere with the discretion of the learned magistrate, there would be chaos in the lower courts so far as exercising the discretion in the matter of punishment is concerned. I cannot say the sentence imposed by the learned magistrate is manifestly excessive. In the circumstances I must therefore dismiss the appeal.

Appeal dismissed.

YEO HOCK HENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) February 7, 1969]
[Penang — Criminal Appeal No. 6 of 1969]

Criminal Law and Procedure — Sentence — Assaulting public servant — Fine of $80 held inadequate.

Prevention of Crime Ordinance, 1959, s. 3.

Penal Code, s. 353.

A fine of $80 for an offence of assaulting a public servant in the execution of his duty is inappropriate.

CRIMINAL APPEAL.

Baldev Singh Bhar for the appellant.

K.C. Vohrah (Deputy Public Prosecutor) for Public Prosecutor.

Ong Hock Sim J. (delivering oral judgment): The appellant was convicted on a charge of assaulting a public servant with intent to deter the public servant from discharging his duty, an offence punishable under section 353 of the Penal Code, and was fined $80 in default 3 weeks' imprisonment by the learned magistrate.

There are no grounds for holding that the arrest was illegal in view of section 3 of the Prevention of Crime Ordinance No. 13 of 1959, which empowers a police officer to arrest without a warrant any person wanted for the purpose of an inquiry. In the circumstances the cases cited by the appellant's counsel are not applicable and I propose to disregard them.

There may have been a conflict of evidence as to how the injuries came about. The learned magistrate has heard the two different versions and she has come to a finding of fact. The appellant denies having slapped the complainant but there is medical evidence to support that the complainant had suffered injuries.

A fine of $80 for an offence of assaulting a public servant in the execution of his duty is, to my mind, clearly inappropriate. I therefore set aside the fine and substitute therefor a sentence of 6 months' imprisonment with effect from today.

Sentenced of fine set aside; sentence of imprisonment imposed.

SERI & ANOR. v. ORIENTAL FIRE & GENERAL INSURANCE CO. LTD.

[O.C.J. (Choor Singh J.) February 8, 1969]
[Singapore — Suit No. 1206 of 1966]

Insurance — Motor insurance — Use of vehicle for carriage of goods other than samples — Occupation stated in policy as clerk — Insured using vehicle for carriage of goods in connection with catering business — Insurers not liable under policy.

The plaintiffs obtained as damages and costs the sum of $24,998 in an action against a driver of a car whose negligent driving caused the death of a person of whose estate the plaintiffs were the administrators. In this action the plaintiffs claimed that sum from the defendant company as insurers. The defendant company repudiated liability on the ground that the defendant company did not cover use of the vehicle for carriage of goods other than samples in connection with any trade or business and that at the time of the accident the car was being used for carriage of goods other than samples.

The driver signed a proposal form describing himself as a clerk when he was in fact running a catering business during the day and in charge of a bar in the evenings. The catering business consisted of collecting cakes from several bakeries and selling and delivering them to various canteens and coffee shops. The defendant company agreed that the onus of proving that the car was being used at the time of the accident for the carriage of goods other than samples was on it and alleged that at the material time the driver was carrying cakes on the rear seat of the car thus using the car for the carriage of goods in connection with his catering business. The plaintiffs denied this allegation.

Held, dismissing the action: (1) the court should always strictly construe and enforce the conditions of user of a car in an insurance policy. *Jones* v. *Welsh Insurance Corporation Ltd.*(1) considered;

(2) in this case the evidence clearly showed that at the time of the accident the car was being used not in connection with the driver's declared business of a clerk, but for the carriage of goods in connection with his catering business.

Case referred to:—

(1) *Jones* v. *Welsh Insurance Corporation Ltd.* [1937] 4 All E.R. 149.

CIVIL SUIT.

J. Cashin (*T.G. Dunbar* with him) for the plaintiffs.

Tan Tee Seng for the defendants.